

Page 162

record as requested.)

MR. LIESEMER: Same objection.

MS. HARDING: Same objection.

THE WITNESS: I mean, in this area, the TDP says what it says.

MR. LEWIS: Okay.

THE WITNESS: I am not going to start giving my interpretation.

The values are set forth specifically.

BY MR. LEWIS:

Q. Do you take the position that the TDP is fair, or do you not take a position on that issue?

A. I think I said that I think the TDP is -- in terms of the differences between the claims, that the criteria in terms of exposure, disease and so on, that differentiate between the hundreds of thousands of asbestos personal injury claims that were filed against Grace

GR Obj: R;H

PP Ctr.

OBS Obj: R;H

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pre-petition, that the Trust Distribution Procedure adequately addresses the difference in valuing the claims and provides a forum for those -- a procedure and forum for those claimants who differ with the valuation of the claims to litigate the issues.

Q. Do you agree that the best estimate of the historical value of claims would be based on the information that's provided in Exhibit-1, page 91-1625?

A. That's --

MS. HARDING: I am just going to object to the form again with respect to the vague reference to claims and whether you are talking about what claims you are trying to value now.

MR. LIESEMER: Object to the form of the question.

MR. LEWIS: Would you read back it back? He was starting to answer.

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(The reporter read from the record as requested.)

THE WITNESS: I think that, like any valuation, when you are looking at a large population, that this information is a good measure. When you try to -- for example, when you talk about Libby claims, you have identified a much smaller population. And while it's a measure, there is always the potential which I think I believe is the case in the Libby situation, that there is a fundamental shift in terms of the types of claims we are seeing at Libby that were being filed that were 15, 20 years ago from those that I see that are being filed currently, both in terms of the exposure and the disease.

So while I agree that this is valuable data and most important data because it

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accurately reflects Grace's experience in the tort system, I think that, as you get into smaller groups, there is the potential that the smaller population can change over time. And so you are better off using criteria that addresses value, medical exposure that reflects a much broader population.

BY MR. LEWIS:

Q. What claims are being filed since Grace went into bankruptcy that you are relying on in your answer?

MS. HARDING: Object to form.

BY MR. LEWIS:

Q. Claims to date?

MS. HARDING: I don't know if he said filed or asserted.

THE WITNESS: I meant asserted.

BY MR. LEWIS:

Q. What claims are there; do

<p style="text-align: right;">Page 182</p> <p>1 MS. HARDING: Object to the</p> <p>2 extent it requires divulging</p> <p>3 attorney-client communication or</p> <p>4 work product.</p> <p>5 THE WITNESS: Again, it's</p> <p>6 not a defined term. I certainly</p> <p>7 made that argument.</p> <p>8 But I think that that is a</p> <p>9 question that can't be answered</p> <p>10 without knowing the particular</p> <p>11 jurisdiction and the particular</p> <p>12 time period involved. Defendants'</p> <p>13 profile changed over time and</p> <p>14 differed from jurisdiction to</p> <p>15 jurisdiction.</p> <p>16 BY MR. LEWIS:</p> <p>17 Q. The reason I inquire about</p> <p>18 the term is you have used it in prior</p> <p>19 depositions, and I couldn't determine</p> <p>20 from the term what you meant by it.</p> <p>21 But with respect to Libby,</p> <p>22 at no time was Grace a peripheral</p> <p>23 defendant; do you agree with that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 - - -</p> <p>2 AFTERNOON SESSION</p> <p>3 - - -</p> <p>4 BY MR. LEWIS:</p> <p>5 Q. I want to go to page 13 of</p> <p>6 the document entitled Topic of Deposition</p> <p>7 that Grace produced here. I want to go</p> <p>8 to the Rights of BNSF, BNSF being</p> <p>9 Burlington Northern Santa Fe Railway</p> <p>10 Company.</p> <p>11 A. Yes.</p> <p>12 Q. What do you know about those</p> <p>13 claims in the bankruptcy?</p> <p>14 MS. HARDING: Object to</p> <p>15 broadness and form.</p> <p>16 But go ahead.</p> <p>17 THE WITNESS: What I know is</p> <p>18 that Burlington Northern</p> <p>19 Railroad -- well, let me start</p> <p>20 again.</p> <p>21 Grace's mine and milling</p> <p>22 facility outside of Libby, Montana</p> <p>23 had a process where from the mill,</p> <p>24 it ran down the mountain to a</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. LEWIS: Okay. I think I</p> <p>2 have gone 15 minutes. I think I</p> <p>3 can get done in 30 minutes after</p> <p>4 we take a break.</p> <p>5 MS. HARDING: Okay.</p> <p>6 - - -</p> <p>7 (There was a luncheon recess</p> <p>8 from 11:57 a.m. to 12:51 p.m.)</p> <p>9 - - -</p>	<p style="text-align: right;">Page 185</p> <p>1 loading station on railroad tracks</p> <p>2 that were on the banks of the</p> <p>3 Kootenai River that they operated</p> <p>4 this loading station on railroad</p> <p>5 property and rail line owned by</p> <p>6 the Burlington Northern Railroad;</p> <p>7 that in connection with the</p> <p>8 agreement to which Grace operated</p> <p>9 the loading facility, for lack of</p> <p>10 a better term, they agreed to</p> <p>11 indemnify the Burlington Northern</p> <p>12 Railroad for injuries and personal</p> <p>13 injuries resulting from the</p> <p>14 loading activities on the property</p> <p>15 down at the railroad; and that</p> <p>16 there is a question in my mind,</p> <p>17 and although I have seen some</p> <p>18 documents, and there is also that</p> <p>19 there was some insurance provided</p> <p>20 to them in connection with the</p> <p>21 indemnification, either through a</p> <p>22 specific policy that Grace</p> <p>23 acquired that Burlington Northern</p> <p>24 was the insured or there were also</p>

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1 some allegations -- again, I don't
2 know which one -- I am not sure
3 this latter part was ever proven,
4 at least to my satisfaction.

5 There were also some
6 allegations that there may have
7 been some Grace policies in
8 existence during some period of
9 time during Grace's operation that
10 Burlington Northern was added as
11 an additional insured on the Grace
12 policies.

13 BY MR. LEWIS:

14 Q. You have never seen those
15 policies?

16 A. I have seen some of the
17 indemnification agreements, and I may
18 have seen the policies, some of the
19 policies over the course of time.

20 Q. Do you recall that the
21 policies --

22 MS. HARDING: Were you
23 finished? I didn't know if you
24 were finished.

1 think --

2 MR. LEWIS: I thought that's
3 what you said.

4 BY MR. LEWIS:

5 Q. Did you say that?

6 A. There is an indemnification
7 around.

8 Q. Whether it's a siding
9 agreement, there is an indemnification?

10 A. Right. And I have seen
11 those. I just don't recall the specific
12 details.

13 Q. And there were Grace
14 employees that worked on that siding
15 loading vermiculite concentrate -- do you
16 know what vermiculite concentrate is?

17 A. Yes, I do.

18 Q. Okay. It's partially
19 processed. It's ore processed before
20 it's expanded, correct?

21 A. Yes. It's the beneficiated
22 up at the mine and mill that's processed,
23 and it's shipped in railcars out to
24 expanding plants. And it generally then

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1 THE WITNESS: Yes.

2 MS. HARDING: Sorry. Okay.

3 BY MR. LEWIS:

4 Q. By the way, any time if I
5 interrupt you, sometimes I get going and
6 I interrupt -- I am in a good way today,
7 but sometimes I interrupt -- you stop me,
8 and I will let you finish your answer. I
9 may not like it, but I will let you
10 answer.

11 Did you see any of the
12 policies that named Burlington Northern
13 Santa Fe as an additional named insured?

14 A. I don't recall specifically
15 seeing those, no.

16 Q. Are you referring to siding
17 agreements? Is that what you are
18 referring to?

19 A. Yes.

20 Q. So it's your understanding
21 that the siding agreements themselves
22 provided that Grace would indemnify the
23 BNSF?

24 MS. HARDING: I just don't

1 goes to further processing out at the
2 plants.

3 Q. Okay. But you are not able
4 to ascertain for sure that there were
5 policies that named BNSF as an
6 additionally named insured; is that true?

7 MS. HARDING: Object to
8 form.

9 THE WITNESS: I don't recall
10 seeing policies --

11 MR. LEWIS: Okay. Fair
12 enough.

13 THE WITNESS: -- or evidence
14 there was.

15 BY MR. LEWIS:

16 Q. BNSF, have they filed a
17 valid proof of claim in the bankruptcy?

18 MS. HARDING: Object to
19 form.

20 THE WITNESS: They filed
21 proofs of claim.

22 MS. HARDING: To the extent
23 it calls for a legal conclusion.

24 Go ahead.

<p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. I know at least one -- I</p> <p>3 think that Burlington Northern has filed</p> <p>4 an objection to the Plan in which they</p> <p>5 contend that there is coverage that was</p> <p>6 available that's not listed here. I</p> <p>7 think it was specifically with respect to</p> <p>8 Royal Indemnity.</p> <p>9 Are you aware of that?</p> <p>10 MS. HARDING: Aware of their</p> <p>11 objection; is that the question?</p> <p>12 MR. LEWIS: Yes, the</p> <p>13 objection.</p> <p>14 THE WITNESS: I am generally</p> <p>15 aware of the objection.</p> <p>16 BY MR. LEWIS:</p> <p>17 Q. Is there a claim that there</p> <p>18 were earlier policies issued to Zonolite</p> <p>19 that are not addressed by this Plan?</p> <p>20 MS. HARDING: Just object to</p> <p>21 the form to the extent that the</p> <p>22 objection speaks for itself.</p> <p>23 But to the extent you</p> <p>24 recall, go ahead and answer.</p>	<p style="text-align: right;">Page 212</p> <p>1 to Montana.</p> <p>2 Are you familiar with the</p> <p>3 claims against the State of Montana by</p> <p>4 the Libby claimants?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Do you need me to</p> <p>7 identify or define what I mean by the</p> <p>8 Libby claimants?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Mr. Lewis is among</p> <p>11 other attorneys that represent plaintiffs</p> <p>12 in state court actions pending in</p> <p>13 Montana, including Lincoln County.</p> <p>14 And you are familiar with</p> <p>15 those?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Are you aware that</p> <p>18 the State of Montana has been named as a</p> <p>19 defendant in over 140 cases in the</p> <p>20 various Montana state courts?</p> <p>21 A. I know that there are cases</p> <p>22 against the State of Montana in Montana</p> <p>23 state courts. I didn't know the number.</p> <p>24 Q. And you testified earlier</p>
<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: I don't</p> <p>2 recall.</p> <p>3 MR. LEWIS: Let me look at</p> <p>4 my notes. I think I am finished.</p> <p>5 I will pass the witness.</p> <p>6 MS. HARDING: Could I just</p> <p>7 have two minutes? Just give me</p> <p>8 two minutes.</p> <p>9 MR. LEWIS: Sure.</p> <p>10 (There was a break from 1:18</p> <p>11 p.m. to 1:26 p.m.)</p> <p>12 (Hughes-3 marked for</p> <p>13 identification at this time.)</p> <p>14 - - -</p> <p>15 EXAMINATION</p> <p>16 - - -</p> <p>17 BY MR. MANGAN:</p> <p>18 Q. Good afternoon, Mr. Hughes.</p> <p>19 Kevin Mangan on behalf of the State of</p> <p>20 Montana.</p> <p>21 Mr. Hughes, are you</p> <p>22 familiar -- and I know Mr. Lewis had</p> <p>23 asked you a few questions regarding</p> <p>24 various defendants in litigation relating</p>	<p style="text-align: right;">Page 213</p> <p>1 that you are aware that the State of</p> <p>2 Montana has filed a contribution</p> <p>3 indemnification claim against Grace in</p> <p>4 this bankruptcy proceeding; is that</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know what the basis</p> <p>8 is for this contribution indemnification</p> <p>9 claim?</p> <p>10 A. I think that Grace's</p> <p>11 operations, that the exposures and the</p> <p>12 injuries that are the subject of the</p> <p>13 State of Montana claims were a result of</p> <p>14 Grace's operations and that the State of</p> <p>15 Montana, to the extent it has to</p> <p>16 reimburse these people or compensate</p> <p>17 these people for these injuries, are</p> <p>18 entitled to recover from portion of that</p> <p>19 under theories of indemnification and</p> <p>20 contribution from W.R. Grace.</p> <p>21 Q. And would these claims have</p> <p>22 arisen from mining and processing of</p> <p>23 vermiculite within Montana?</p> <p>24 MR. LEWIS: Objection as to</p>

PP
Obj:
F

Montana

Page 214

1 what do you mean by these claims?
 2 MR. MANGAN: I am sorry.
 3 The Libby claims.

4 MS. HARDING: Object to form
 5 and foundation. To the extent you
 6 know, whatever the claims are, if
 7 they have been filed, they speak
 8 for themselves.

9 But go ahead.

10 THE WITNESS: My
 11 understanding is that they are the
 12 result of Grace's vermiculite
 13 mining and processing operations
 14 in Lincoln County, Montana.

15 BY MR. MANGAN:

16 Q. Mr. Hughes, are you aware
 17 that the State of Montana has denied
 18 liability with regard to claims brought
 19 by the Libby claimants against the State?

20 A. Not specifically, no.

21 Q. Are you aware of whether the
 22 State of Montana has paid any claims --
 23 strike that.

24 Are you aware of whether the

PP Obj:

F

PP Obj:

F

Montana

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1 result of -- somehow the
 2 inspections breached that duty,
 3 and they are entitled to
 4 compensation and damages as a
 5 result of the breach.

6 BY MR. MANGAN:

7 Q. And do those allegations
 8 form the basis for the State's claims for
 9 contribution indemnification against
 10 Grace?

11 A. Yes, they are related to the
 12 claims.

13 Q. And will you agree with me
 14 that the State of Montana has filed a
 15 timely proof of claim within this
 16 bankruptcy case?

17 MS. HARDING: Object to the
 18 form.

19 MR. LIESEMER: Object to the
 20 form.

21 MS. HARDING: And with
 22 respect to the respect it calls
 23 for a legal conclusion.

24 If you can answer, go ahead.

PP Obj:

LO; F

Montana

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1 State of Montana has paid with regard to
 2 claims, whether it be through settlement
 3 or verdict?

4 A. I am not familiar with the
 5 history up there so far.

6 Q. Mr. Hughes, are you aware of
 7 the basis which the Libby claimants have
 8 sued the State of Montana?

9 A. Yes.

10 Q. And what is that?

11 A. I think I testified --

12 MS. HARDING: Object, asked
 13 and answered.

14 THE WITNESS: -- earlier.
 15 It's that the State of Montana in
 16 exercising its regulatory power
 17 over the operations in Lincoln
 18 County conducted inspections of
 19 the mine and mill facility through
 20 various couple of different
 21 agencies over time, and that in so
 22 doing, they created a duty between
 23 the State and the individuals
 24 working at the mine. And as a

PP Obj:

F

PP Obj:

F

F; BE

PP Obj:

F

Montana

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1 THE WITNESS: My
 2 understanding is that it had, but,
 3 again, I would be more comfortable
 4 if we could verify that. But yes.

5 BY MR. MANGAN:

6 Q. But you are aware that the
 7 State has filed a proof of claim?

8 A. It's my understanding that
 9 the State has filed a proof of claim.

10 Q. How are the claims of State
 11 of Montana for contribution
 12 indemnification being treated under the
 13 Plan?

14 MS. HARDING: I am just
 15 going to object to the extent that
 16 this witness wasn't designated for
 17 that purpose. Mr. Finke was, and
 18 I think he's testified, as has
 19 Mr. Lockwood and other folks.

20 But to the extent you know,
 21 go ahead.

22 THE WITNESS: Well, they are
 23 treated as asbestos personal
 24 injury claims, and within the

PP Obj:

LO; F

PP Obj:

F; BE

PP Obj:

F

PP Obj:

F

Montana

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1 asbestos personal injury claim,
 2 there are asbestos derivative
 3 claims. And they would be
 4 channelled to the Trust and
 5 treated in accordance with the
 6 Trust Distribution Procedures.
 7 There are provisions of the Trust
 8 Distribution Procedures that deal
 9 with derivative asbestos claims.
 10 BY MR. MANGAN:
 11 Q. Would that be Section 5.6?
 12 A. I believe so.
 13 Q. Let me mark as an exhibit or
 14 it already has been marked. Excuse me.
 15 Hughes-3. Could you take a look at that?
 16 A. Sure.
 17 Q. Could you identify what
 18 Hughes-3 is, sir?
 19 A. It's Exhibit 4 to the
 20 Exhibit Book, it says here, with I
 21 believe the Plan, and it's a copy of the
 22 Trust Distribution Procedures that are
 23 part of the proposed Plan in the Grace
 24 bankruptcy.

PP
Obj:
F

Montana

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1 Q. Does the Plan or the TDP
 2 make any distinction between contribution
 3 indemnification claims versus personal
 4 injury, wrongful death, or property
 5 damage claims?

PP
Obj:
F;
BE;
LU

6 MS. HARDING: Object to
 7 form. The Plan speaks for itself.
 8 To the extent that you
 9 know...

PP
Obj:
F;
BE;
LU

10 THE WITNESS: Well, it
 11 certainly has -- 5.6 deals with
 12 indirect PI Trust claims, so there
 13 is certainly some provisions that
 14 recognize a difference between,
 15 you know, direct claims, personal
 16 injury plaintiffs and injured
 17 parties, and claims that arise
 18 from some sort of obligation of
 19 Grace to indemnify parties or
 20 contribution claims.

21 BY MR. MANGAN:
 22 Q. Would you consider Montana's
 23 claims of a different nature than a
 24 typical personal injury wrongful death or

PP
Obj:
LU;
F

Montana

Page 219

1 Q. Okay. And I believe you had
 2 testified earlier that you have reviewed
 3 that in preparation of this deposition?

4 A. Yes.

5 Q. And I think you had
 6 testified to this, but I just want to be
 7 clear. You did not draft this; is that
 8 correct?

9 A. Yes.

10 Q. You only reviewed it?

11 A. Yes.

12 Q. And who was the draftsman of
 13 this document?

PP
Obj:
F

14 MS. HARDING: Object to form
 15 and foundation.

16 To the extent that you know,
 17 go ahead.

PP
Obj:
F

18 THE WITNESS: I don't know
 19 specifically who was the
 20 draftsman. I think Peter
 21 Lockwood, when he testified, may
 22 have provided more information
 23 about that.

24 BY MR. MANGAN:

Montana

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1 property damage claim?

2 MS. HARDING: Objection,
 3 calls for a legal conclusion.

4 MR. LIESEMER: I join in the
 5 objection.

6 THE WITNESS: Again, I agree
 7 with those who have objected that
 8 it calls for a legal conclusion,
 9 but they are certainly different.
 10 The State of Montana is the State
 11 of Montana, and individual
 12 claimants are individual
 13 claimants.

PP
Obj:
LU;
F

14 BY MR. MANGAN:

15 Q. To your understanding, are
 16 the Montana claims based on different
 17 acts from the types of claims which other
 18 asbestos PI claims relate?

PP
Obj:
LU;
F

19 A. I don't know what you mean
 20 by different acts.

21 MS. HARDING: Object the
 22 form.

23 MR. LIESEMER: Object to
 24 form.

Montana

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1 MS. HARDING: Again, I think
2 it calls for a legal conclusion.

3 BY MR. MANGAN:

4 Q. You testified earlier that
5 you believe that claims were based on the
6 failure to warn; is that correct?

7 MS. HARDING: Object to
8 form, and I think it --

9 THE WITNESS: I don't think
10 I said that.

11 MS. HARDING: I don't think
12 he said anything about failure to
13 warn.

14 THE WITNESS: Do you mean
15 the claims against State of
16 Montana?

17 BY MR. MANGAN:

18 Q. Yes, sir.

19 A. I thought I said the State
20 in exercising its right to power to
21 regulate the operations of Grace in
22 Montana undertook to inspect the
23 facilities, and as a result of that
24 activity, they had duties vis-a-vie the

PP Obj:
BE;
F;
R;
LO

PP Obj:
BE;
F;
R;
LO

Montana

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1 employees in that it's alleged that there
2 is a breach of these duties, whether it
3 be a failure to warn or other things of
4 things. I don't know I said anything
5 about that. And I don't know the
6 details.

7 MS. HARDING: And I am just
8 going to object to the extent that
9 this witness is being asked to
10 characterize other claimants'
11 claims and issues that can be
12 readily read from a document that
13 describes the claim.

14 I don't know what relevance
15 it has to have this witness
16 characterize somebody else's
17 claims in light of the fact that
18 we are trying to get out of here.

19 But go ahead.

20 MR. MANGAN: I will be
21 brief.

22 MS. HARDING: I am trying to
23 let him answer everything.

24 MR. MANGAN: Thank you. And

PP Obj:
BE;
F;
R;
LO

Montana

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1 I just want to note that I believe
2 he was identified with regard to
3 claims, specifically the claims of
4 the State of Montana and other
5 BNSF and MCC as well as others.
6 So to the extent --

7 MS. HARDING: Let's just go
8 on. He's certainly not identified
9 to be the lawyer for anybody else
10 but W.R. Grace.

11 MR. MANGAN: Fair enough.

12 MS. HARDING: Go ahead. I
13 am not trying to be difficult.

14 BY MR. MANGAN:

15 Q. What is your understanding
16 how contribution indemnification claims
17 would be eventually paid pursuant to the
18 Trust, in what form would the payment
19 take?

20 MS. HARDING: Object to
21 form.

22 MR. LIESEMER: Object to
23 form.

24 MS. HARDING: The document

PP Obj:
BE;
LO;
F

Montana

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1 speaks for itself, and it calls
2 for speculation.

3 But go ahead.

4 THE WITNESS: I am not sure
5 I understand the question. What
6 do you mean by what form?

7 BY MR. MANGAN:

8 Q. Would contribution
9 indemnification claims be paid through
10 cash payment or stock or some or form of
11 payment?

12 A. I think they would be paid
13 pursuant to the Trust Distribution
14 Procedure, and I think the people are
15 paid in cash generally.

16 Q. At what point in time
17 pursuant to the Trust Distribution
18 Procedures would a contribution
19 indemnification claim be made?

20 MS. HARDING: Object to
21 form. It calls for speculation.

22 THE WITNESS: Pardon?

23 BY MR. MANGAN:

24 Q. Within the TDP, at what

PP Obj:
BE

PP Obj:
F;
BE;
LO

PP Obj:
F; BE; LO

Montana

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1 point in time would payments be made to
 2 avail a contribution indemnification
 3 claim?

PP
Obj:
F; BE;
LO

4 MS. HARDING: I am just
 5 going to object to form. I think
 6 to the extent the document
 7 addresses that, it speaks for
 8 itself. I am just not sure I
 9 understand the question.

10 But go ahead, if you
 11 understand.

12 THE WITNESS: I am not sure
 13 I understand. I think as a
 14 general rule, it would be when the
 15 indirect personal injury -- the
 16 holder of the indirect personal
 17 injury claim, its liability to the
 18 underlying claimant and it would
 19 become, for lack of a better term,
 20 fixed.

PP Obj:
F;
BE;
LO

21 BY MR. MANGAN:

22 Q. Okay. Claims under the TDP,
 23 are they processed on a
 24 first-in/first-out basis?

PP Obj:
BE;
F; LO

Montana

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1 MS. HARDING: Object to
 2 form.

PP Obj:
BE;
F; LO

3 THE WITNESS: Generally,
 4 there is a first-in/first-out
 5 process, but the Trust
 6 distribution procedure describes
 7 in much more detail. There is a
 8 lot of exceptions and different
 9 kind of -- the details of how the
 10 first-in/first-out queue operates.

11 BY MR. MANGAN:

12 Q. Is that also true when
 13 claims would be paid under the Trust?

14 A. Again, the document speaks
 15 for itself, but, yes, there are
 16 differences when claims would be paid.

17 Q. Is it fair to say that
 18 claims that are, as you said, fixed
 19 earlier in the process would be paid
 20 earlier than other claims later in the
 21 process?

22 MR. LIESEMER: Object to
 23 form.

24 MS. HARDING: Object to

Montana

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1 form.

2 THE WITNESS: You will have
 3 to ask the question again.

4 BY MR. MANGAN:

5 Q. Is it fair to say that
 6 claims under the Trust that are made
 7 under the Trust, they could be paid at an
 8 earlier time than other claims that start
 9 in the process later?

PP
Obj:
BE; F; LO

10 MS. HARDING: Object to
 11 form.

12 THE WITNESS: I think there
 13 is that possibility, but, again, I
 14 think the agreement in the Trust
 15 Distribution Procedures in the
 16 document speak for themselves.

PP Obj:
BE;
F; LO

17 BY MR. MANGAN:

18 Q. Is it your understanding
 19 that any of the claims that Montana might
 20 have against the Debtor for their
 21 contribution indemnification are based on
 22 independent conduct on the part of the
 23 State?

PP Obj:
LO; F

24 MR. LIESEMER: Object to the

Montana

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1 form, legal conclusion.

2 MS. HARDING: Object to the
 3 form. It calls for a legal
 4 conclusion.

5 THE WITNESS: It's based on
 6 the -- they are based on the
 7 State's conduct, and I think that
 8 the Montana Supreme Court decision
 9 is probably where you -- it
 10 defines that conduct and defines
 11 the legal basis for the claims
 12 against the State.

PP Obj:
LO;
F

13 BY MR. MANGAN:

14 Q. Does the Trust make any
 15 distinction between claims that would be
 16 derivative as opposed to claims that
 17 might not otherwise be derivative?

PP Obj:
LO;
F

18 A. You will have to ask the
 19 question again. I am not sure I
 20 understand it.

21 Q. I will strike that.

22 Under 5.6 of the TDP, are
 23 you familiar with that section, sir?

24 A. Generally, yes.

Montana

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1 Q. Okay. And that's relating
2 to the indirect PI Trust claims?
3 A. Yes.
4 Q. Is there a provision in
5 there that these indirect claims would
6 proceed or process in accordance with
7 procedures to be developed at a later
8 point in time?
9 MS. HARDING: Object to
10 form. Is there a particular
11 language you want him to look at?
12 It would just be helpful.
13 MR. MANGAN: Okay. Let me
14 go back to that in a second.
15 BY MR. MANGAN:
16 Q. If you could turn to page 32
17 of the Trust, Section 5.4(a), that's
18 relating to extraordinary claims.
19 A. Yes.
20 Q. Could you tell me what are
21 the requirements for a claimant to bring
22 an extraordinary claim?
23 MS. HARDING: Object to
24 form.

PP Obj:
BE;
LO

Montana

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1 MR. MANGAN: Generally.
2 MS. HARDING: Do you want
3 him to -- in his own words?
4 BY MR. MANGAN:
5 Q. What is your understanding
6 of that, sir?
7 A. My understanding is that
8 there are people who -- excuse me --
9 whose exposure occurred primarily at a
10 Grace facility or that at least 75
11 percent of their asbestos exposure was
12 the result of exposure to Grace products,
13 and to some other language about Grace
14 conduct for or conduct for which Grace
15 had legal responsibility. And then there
16 is a subgroup that also requires 95
17 percent exposure to Grace products.
18 Q. And is one of the conditions
19 also that there would be little
20 likelihood of substantial recovery
21 elsewhere?
22 A. Yes.
23 Q. What is meant by that term?
24 MS. HARDING: Object to

PP Obj:
BE;
LOPP Obj:
BE;
F

Montana

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1 form.
2 MR. LIESEMER: Objection to
3 form.
4 MS. HARDING: And
5 foundation.
6 BY MR. MANGAN:
7 Q. Are you familiar with that
8 phrase and why that was put into the
9 Trust?
10 A. Yeah. I mean, it's
11 logically consistent with the idea that
12 seven people who have 75 percent or 95
13 percent of their exposure to asbestos
14 from Grace products or conduct for which
15 Grace had legal responsibility, therefore
16 where these are primarily Grace exposure
17 cases, the logic and behind that is that
18 Grace would therefore have a higher level
19 of responsibility for claims and,
20 therefore, these people are entitled to
21 additional compensation.
22 If claims of this group, for
23 example, have 75 to 95 percent, if it
24 develops over the course of time, have

PP Obj:
F;
LO

Montana

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1 other sources of compensation, then it
2 seems to me the logic for these claims
3 being treated as extraordinary claims --
4 an individual claim collapses, and that's
5 why that language is there.
6 So you don't have a series
7 of people coming in who have already been
8 compensated, who are receiving
9 substantial amounts of money from other
10 parties, being able to come in and claim
11 extraordinary claim status under the TDP.
12 But, again, all of this, all
13 of this is really a question about the
14 operations of the Trust, and the Trust
15 hasn't even been formed, let alone be in
16 operation. And I think while the Trust
17 Distribution Procedures set forth kind of
18 a roadmap of what's going to happen, some
19 of these questions and some of your
20 questions really are questions that are
21 kind of operational. And you would have
22 to see how it operates in practice once
23 the Trust is up and running.
24 Q. So there are a lot of issues

PP Obj:
F;
LO

Montana

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1 that need to be ironed out with
2 operations of this Trust?

3 MS. HARDING: Object to
4 form.

5 THE WITNESS: There is with
6 any contract. I think this is a
7 fairly detailed one in an effort
8 to kind of govern it. But when
9 you are setting up a Trust or any
10 process, the document can only do
11 so much. Some of the specific
12 issues that come up are going to
13 have to be dealt with once the
14 Trust becomes operational.

15 BY MR. MANGAN:

16 Q. And who would be making
17 those decisions when the Trust becomes
18 operational?

19 MS. HARDING: Object to
20 form, foundation, speculation, and
21 it's overly broad in terms of what
22 issues.

23 THE WITNESS: The Trust.

24 BY MR. MANGAN:

PP
Obj:
LOPP
Obj:
F;
LO

Montana

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1 it's appropriate to use the same
2 criteria in terms of just
3 measuring their exposure to the
4 exposure of the person to be a
5 related occupationally exposed
6 person.

7 So it doesn't have to be a
8 family member, but I don't think
9 it would necessarily be applicable
10 to a community member as I read
11 it. But, again, others may
12 differ.

13 BY MR. MANGAN:

14 Q. Do you know what was the
15 history of this provision in the Trust?
16 Are you familiar with that.

17 MS. HARDING: Object to
18 form.

19 BY MR. MANGAN:

20 Q. How did this get into the
21 Trust?

22 MS. HARDING: And
23 foundation.

24 THE WITNESS: Well, I think

PP
Obj:
BE; LOPP
Obj:
FPP
Obj:
FPP
Obj:
F

Montana

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1 Q. And the Trust is yet to be
2 created, right?

3 A. Yes.

4 Q. If you could flip to Section
5 5.5, sir, Secondary Exposure Claims, do
6 you see that section?

7 A. Yes.

8 Q. Does this provision relate
9 to family members or does it also relate
10 to people who live in the community?

11 MR. LIESEMER: Object to
12 form.

13 MS. HARDING: Object to
14 form. Again, the document speaks
15 for itself.

16 THE WITNESS: I don't think
17 it would be necessary to relate it
18 to family members. But in
19 virtually -- in most cases, it
20 would be, because I think it's
21 dealing with situations where the
22 individual who has exposure is the
23 result of proximity to another
24 individual, spouse, and therefore

PP
Obj:
BE;
LOPP
Obj:
BE;
LO

Montana

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1 secondary exposure issues have
2 been around the asbestos
3 litigation for years and is
4 something that has to be dealt
5 with by the Grace Trust and is
6 dealt with by the other Trust as
7 well.

8 BY MR. MANGAN:

9 Q. Do you know whether this was
10 placed in there directly related to Libby
11 claimants?

12 MS. HARDING: Object to form
13 to the extent it calls for Plan
14 negotiations.

15 But you can answer.

16 THE WITNESS: I don't know.

17 BY MR. MANGAN:

18 Q. Could you turn to page 42?
19 I will direct you to 5.7(b)(3), Grace
20 Exposure.

21 A. Yes.

22 Q. Does this provision refer
23 only to Libby claims?

24 MS. HARDING: Object to

PP
Obj:
FPP
Obj:
FPP
Obj:
F

Montana

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1 form.
 2 MR. LIESEMER: Object to
 3 form.
 4 THE WITNESS: Refer only to
 5 Libby claims?
 6 BY MR. MANGAN:
 7 Q. Yes sir.
 8 A. No.
 9 Q. Was it placed into the Trust
 10 to address Libby claims?
 11 MS. HARDING: Objection.
 12 THE WITNESS: Some portion
 13 of it was.
 14 MS. HARDING: Objection to
 15 form.
 16 MR. LIESEMER: Objection to
 17 form.
 18 BY MR. MANGAN:
 19 Q. Is it necessary to read this
 20 provision, 5.7(b)(3), together with 5.5,
 21 which we discussed just a moment ago?
 22 MS. HARDING: Object to the
 23 form to the extent it calls for a
 24 legal conclusion, and also the

PP Obj:
FPP Obj:
BE;
LO

Montana

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1 MS. HARDING: Object to
 2 form. The witness has already
 3 testified he didn't draft the
 4 document, so I object on
 5 foundation. You are asking when
 6 it was drafted and was it drafted
 7 for that reason, then I object on
 8 foundation.
 9 THE WITNESS: It would seem
 10 to me that the answer to your
 11 question is no, but I don't know.
 12 MR. MANGAN: That is all I
 13 have, sir.
 14 - - -
 15 EXAMINATION
 16 - - -
 17 BY MS. CASEY:
 18 Q. Good afternoon, Mr. Hughes.
 19 My name is Linda Casey. I represent BNSF
 20 Railway Corporation.
 21 When I refer to BNSF, I am
 22 going to be referring to BNSF Railway
 23 Corporation and its predecessors,
 24 including Great Northern and Burlington

PP Obj:
F

Montana

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1 document speaks for itself.
 2 But to the extent you know
 3 the answer, go ahead.
 4 And what is the answer,
 5 whether it has to be read?
 6 BY MR. MANGAN:
 7 Q. Do those two provisions need
 8 to be read together, sir?
 9 A. Well, to the extent that
 10 secondary exposure claims in 5.5 is a
 11 reference to exposure to Grace products
 12 and 5.7(b)(3) defines what's considered
 13 Grace exposure, I suppose they have to be
 14 read together.
 15 Q. Could you turn to page 44,
 16 Section 5.9, Second Disease Claims?
 17 Would you take a look at that for a
 18 second?
 19 A. (Witness complies with
 20 request.)
 21 Q. Were the Libby claimants in
 22 mind when this was drafted?
 23 MR. LIESEMER: Object to
 24 form.

PP Obj:
BE;
LOPP Obj:
F

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1 Northern Santa Fe.
 2 Is that acceptable?
 3 A. Sure, that's great.
 4 Q. And when I refer to Grace, I
 5 will be referring to W.R. Grace Company
 6 and its predecessors that operated at the
 7 mine, including Zonolite Corporation.
 8 Is that okay?
 9 A. That's fine.
 10 Q. Are you aware of the
 11 historical business relationship between
 12 Grace and BNSF?
 13 BNSF A. Yes.
 14 Q. Would it be a fair and
 15 accurate summary of that relationship to
 16 say that from at least as early as 1942
 17 Grace operated, through various leases
 18 and agreements between BNSF and Grace, a
 19 loading dock and suspension bridge over
 20 the railway's right-of-way and also
 21 transported vermiculite to be mined over
 22 the railway tracks?
 23 A. Yes.
 24 Q. And do you have an

Arrowood Obj:
LPK; FPP Obj:
RCNA Obj:
F; R; BE;
H

BNSF

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1 understanding as to whether Grace
2 provided indemnification to BNSF for any
3 personal injury or death that resulted
4 from Grace's operations of the suspension
5 bridge and loading dock?

6 MS. HARDING: Object to the
7 form.

8 MR. LIESEMER: Object to the
9 form of the question.

10 THE WITNESS: Yes.
11 (Hughes-4 marked for
12 identification at this time.)

13 BY MS. CASEY:

14 Q. Take a look at exhibit
15 Hughes-4 for me, please.

16 A. Sure.

17 Q. Do you recognize this
18 document?

19 A. I think I have seen it
20 before.

21 Q. Do you know what this
22 document is?

23 A. Based on my review this
24 afternoon, it is an agreement between

PP
Obj:
R
CNA
Obj:
F, R,
D,
H

PP
Ctr

1 belt resulting from or during the use of
2 said premises by the Applicant..."

3 Is that your understanding
4 of one of the indemnification agreements
5 that Grace had provided to BNSF?

6 MS. HARDING: Just object to
7 form and the document speaks for
8 itself.

9 Are you just asking him if
10 that's how the document reads?

11 MS. CASEY: Yes.

12 THE WITNESS: Grace wasn't a
13 party to the agreement. Zonolite
14 Company, it certainly was one of
15 the indemnification agreements
16 between Zonolite Company and the
17 predecessors to BNSF.

18 BY MS. CASEY:

19 Q. Do you have an understanding
20 whether Grace subsequently assumed the
21 obligations under this agreement when
22 it -- strike that.

23 Did Grace purchase the
24 Zonolite Company at some point?

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1 Great Northern Railway and the Zonolite
2 company concerning the Zonolite's
3 operation of the loading dock on the
4 railway company's right-of-way in Libby,
5 Montana.

6 Q. If I can direct your
7 attention to Bates number GCO 00024 --
8 it's the second page of Hughes-4 -- and
9 in particular, paragraph 8.

10 A. Yes.

11 Q. I will just read it. The
12 second line in paragraph 8 reads: "The
13 Applicant shall, and hereby does, further
14 agree to indemnify and hold harmless the
15 Railway Company of and from any and all
16 liability, damages, recoveries,
17 judgments, cost, expense, or other
18 charges and demands on account of
19 injuries to or death of one or more
20 persons or damage to or destruction of
21 the property of one or more persons" -- I
22 think that reads -- "and from or during
23 the construction, repair, maintenance, or
24 operation of said bridge and conveyor

PP
Ctr

1 A. Yes.

2 Q. Do you have an understanding
3 as to whether Grace assumed this
4 agreement and the obligations under this
5 agreement when it purchased the Zonolite
6 Corporation?

7 MS. HARDING: Just object to
8 the extent it calls for a legal
9 conclusion.

10 Go ahead.

11 THE WITNESS: I know that
12 Grace assumed generally the
13 contractual liabilities of the
14 Zonolite Company in connection
15 with its acquisition of Zonolite
16 assets. I don't know specifically
17 whether or not this agreement was
18 identified in the acquisition
19 documentation.

20 BY MS. CASEY:

21 Q. Are you of whether the
22 Zonolite Company obtained insurance,
23 whether direct insurance or through
24 endorsement of its generally liability

<p style="text-align: right;">Page 246</p> <p>1 policies, to insure its indemnification 2 obligation under paragraph 8 or through 3 any other agreement to BNSF? 4 MS. HARDING: Object to 5 form, foundation, and to the 6 extent it calls for a legal 7 conclusion. 8 But go ahead, if you can 9 answer. 10 THE WITNESS: It was 11 required to do so under this 12 agreement. I don't have a 13 specific recollection of whether 14 or not there is any documentation 15 indicating that it did so, 16 although I do recall that there 17 was some correspondence indicating 18 that it did. 19 BY MS. CASEY: 20 Q. Okay. Let's clarify what I 21 am asking. If you go to page GCO 00025, 22 which is the third page of that, 23 Hughes-4. 24 A. Right.</p>	<p style="text-align: right;">Page 248</p> <p>1 purchase or obtain insurance in its own 2 name to insure its indemnification 3 obligation to BNSF? 4 MS. HARDING: Object to 5 form. 6 THE WITNESS: I don't know. 7 BY MS. CASEY: 8 Q. And then moving on to 9 paragraph 9, are you aware of any 10 policies that were purchased for BNSF in 11 accordance with paragraph 9 of this 12 agreement? 13 A. As I said, I am not sure I 14 have seen any policies. I do recall that 15 there is correspondence in the file that 16 would indicate that there may have been 17 policies purchased. 18 Q. Have you seen any 19 certificates of insurance indicating that 20 policies have been purchased? 21 A. Not that I specifically 22 recall. 23 MS. CASEY: Okay. On the 24 record real quick, I am going to</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. And look at paragraph 9, if 2 you would take a look at that. And I 3 will go ahead and read it into the 4 record: "The Applicant shall obtain and 5 keep in full force and effect during the 6 continuance of this agreement, at its own 7 sole cost and expense, a policy of public 8 liability and property damage insurance 9 protecting the Railway Company against 10 loss on account of injuries to or death 11 of persons and loss of or damage to 12 property arising out of use of said 13 premises or arising out of the 14 construction, use and removal of said 15 suspension bridge and conveyor belt." 16 Is that the provision that 17 you are referring to when you said that 18 this agreement requires them to obtain 19 policies for BNSF? 20 A. Yes. 21 Q. Going back to my previous 22 question, paragraph 8 provides an 23 indemnification from Grace to BNSF. 24 My question is, did Grace</p>	<p style="text-align: right;">Page 249</p> <p>1 mark as Hughes-5 a compilation of 2 endorsements to insurance policies 3 issued by Royal Indemnity Company. 4 I have an been informed by 5 BNSF that these endorsements were 6 provided to BNSF by the Royal 7 Indemnity or its successors a long 8 time before the confidentiality 9 order was entered into this case 10 with an was provided to them 11 without a designation of 12 confidentiality or under any 13 confidentiality restriction. 14 I understand from a review 15 yesterday of the Debtors 16 confidential website that the 17 Debtor has now produced the 18 policies and has designated them 19 confidential. These copies do not 20 have that designation as being 21 confidential on it. 22 For purposes of this 23 deposition, BNSF is willing to 24 abide by the confidentiality</p>

Page 254	Page 256
<p>1 MS. CASEY: Okay. I will go 2 ahead and mark Hughes-5. 3 (Hughes-5 marked for 4 identification at this time.) 5 BY MS. CASEY: 6 Q. Do you recognize this 7 document? 8 A. Yes, I do. 9 Q. And what is this document? 10 A. It's a series of emails and 11 some attachments concerning the issue of 12 these certificates of insurance that 13 indicate that Burlington Northern has 14 been named as an insured under some 15 policies of W.R. Grace. 16 Q. And if I can direct your 17 attention to GCO 000090, do you recognize 18 this document? 19 A. Not specifically, but I -- 20 MR. SCHIAVONI: Objection. 21 It calls for speculation. 22 THE WITNESS: I don't 23 specifically remember this 24 document, but I do remember the</p>	<p>1 know who -- I was going to ask the 2 witness that, but he said he 3 didn't recognize the document. 4 THE WITNESS: And, quite 5 frankly, I don't believe -- well, 6 I won't speculate. 7 MS. DeCRISTOFARO: I am 8 sorry. It does appear from the 9 correspondence, at least the way 10 it was produced, that it was 11 generated by counsel. 12 MS. BAER: Has it been 13 established where you got this 14 from? From these Bates numbers, I 15 don't know in what production that 16 was made. When did you obtain 17 this? 18 MS. CASEY: Through the 19 website that the Debtors produced. 20 MS. BAER: So this is on 21 with the policies? 22 MS. CASEY: No, not on the 23 confidential website that was just 24 created, but the website that</p>
Page 255	Page 257
<p>1 correspondence around it, the 2 email exchange. 3 BY MS. CASEY: 4 Q. If you would go to GCO 5 000089, do you recognize this document? 6 A. Again, I recall the specific 7 email exchange in 2006 and the issue 8 coming up at that time, and that's what I 9 was alluding to, that there was 10 correspondence that was consistent with 11 Grace. And now my memory has been 12 refreshed, and I see there are actually 13 certificates of insurance that indicate 14 that Burlington Northern was named as an 15 insured under some Continental Casualty 16 policies to W.R. Grace. 17 Q. Okay. 18 Ms. DeCRISTOFARO: 19 Ms. Casey, this group of 20 documents, the one marked GCO 21 000090, that was produced by 22 BNSF's counsel; is that correct? 23 MS. CASEY: No. This was 24 produced by the Debtors. I don't</p>	<p>1 Debtors created -- 2 MS. BAER: In December? 3 MS. CASEY: -- when the 4 first round of discovery was 5 produced. I have had these 6 documents for months now. 7 Off the record. 8 (There was a discussion held 9 off the record at this time.) 10 MS. DeCRISTOFARO: Hedger 11 Moyers represents BNSF? 12 MS. CASEY: I believe so, 13 yes, in the state court actions. 14 MR. LEWIS: Yes, they do, 15 although that firm does not exist 16 anymore as such. The surviving 17 firm represents them. 18 MS. DeCRISTOFARO: It's an 19 attachment to an email from Hedger 20 Moyers. 21 MS. CASEY: Mark that as 6. 22 (Hughes-6 marked for 23 identification at this time.) 24 BY MS. CASEY:</p>

<p style="text-align: right;">Page 258</p> <p>1 Q. Do you recognize this</p> <p>2 document?] PP</p> <p>3 A. Not specifically, but I --] Ctr</p> <p>4 not specifically, no.</p> <p>5 Q. Generally?</p> <p>6 MS. HARDING: Object to</p> <p>7 form. You asked him if he</p> <p>8 recognized the document. He said</p> <p>9 no.</p> <p>10 BY MS. CASEY:</p> <p>11 Q. This document is dated May] PP</p> <p>12 1961 -- I can't read the actual date --] Ctr</p> <p>13 to the Great Northern Railway Company</p> <p>14 from the Detroit Insurance Agency.</p> <p>15 Do you know who the Detroit</p> <p>16 Insurance Agency is?</p> <p>17 A. They were insurance brokers</p> <p>18 for Zonolite Company at the time.</p> <p>19 Q. And if you read this letter,</p> <p>20 it refers to a Royal Indemnity Company</p> <p>21 general liability policy RLG-02161.</p> <p>22 Are you familiar with that</p> <p>23 policy number?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 260</p> <p>1 frankly --</p> <p>2 MS. HARDING: You can</p> <p>3 answer.</p> <p>4 THE WITNESS: -- this</p> <p>5 document and documents like it for</p> <p>6 the last 25 years have been</p> <p>7 subject to asbestos litigation.</p> <p>8 So this document and any documents</p> <p>9 that would be relevant to this</p> <p>10 case would not be subject to the</p> <p>11 Grace record retention policy and</p> <p>12 would have been maintained.</p> <p>13 BY MS. CASEY:</p> <p>14 Q. Okay. Would that include</p> <p>15 policy number RLH-021669?</p> <p>16 MS. HARDING: Object to</p> <p>17 form. He already said he didn't</p> <p>18 know what that was, so I don't</p> <p>19 know how he can answer.</p> <p>20 But go ahead.</p> <p>21 MR. SCHIAVONI: Could we</p> <p>22 establish whether the witness was</p> <p>23 born at this date in time?</p> <p>24 THE WITNESS: Thank you,</p>
<p style="text-align: right;">Page 259</p> <p>1 MR. LEWIS: Just a second.</p> <p>2 Actually, it was the first of the] PP</p> <p>3 two policies.] Ctr</p> <p>4 MS. CASEY: I was going to</p> <p>5 get to the second policy.</p> <p>6 MR. LEWIS: All right.</p> <p>7 BY MS. CASEY:</p> <p>8 Q. And then halfway down the</p> <p>9 letter, it refers to another policy</p> <p>10 RLH-021669, and this letter states</p> <p>11 specifically naming the Great Northern</p> <p>12 Railway Company as the insured.</p> <p>13 Are you familiar with that</p> <p>14 policy?</p> <p>15 A. No.</p> <p>16 Q. Are you familiar with</p> <p>17 Grace's document retention policy?</p> <p>18 A. Yes.</p> <p>19 Q. What is Grace's document</p> <p>20 retention policy?</p> <p>21 A. Well, I mean --</p> <p>22 MS. HARDING: Object to form</p> <p>23 and it's overly broad.</p> <p>24 THE WITNESS: And quite</p>	<p style="text-align: right;">Page 261</p> <p>1 because I was born at this date</p> <p>2 and time, only a few years before.</p> <p>3 MR. SCHIAVONI: So you were</p> <p>4 3 or 4 years old when the document</p> <p>5 was authored?</p> <p>6 MR. JACOB COHN: Did he</p> <p>7 author it?</p> <p>8 MR. SCHIAVONI: I object to</p> <p>9 the lack of the foundation. It</p> <p>10 calls for speculation.</p> <p>11 MS. CASEY: As to whether</p> <p>12 Grace has maintained that policy</p> <p>13 of insurance?</p> <p>14 MS. HARDING: You asked if</p> <p>15 he knew what that policy was, and</p> <p>16 he said no. So I am not sure how</p> <p>17 he would know whether they</p> <p>18 maintained it if he didn't know</p> <p>19 what it was.</p> <p>20 But to the extent you can</p> <p>21 answer, go ahead.</p> <p>22 THE WITNESS: Again, I don't</p> <p>23 know -- obviously, I know that</p> <p>24 Royal was the general liability</p>

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1 BY MS. CASEY:

2 Q. Okay. You previously
3 testified that you are aware of
4 correspondence that indicates that the
5 Zonolite Company, the predecessor to
6 Grace, did, in fact, purchase policies
7 that named BNSF as the insured?

8 MR. SCHIAVONI: Objection.

9 MS. HARDING: Objection.

10 THE WITNESS: If I testified
11 to that that way, I didn't intend
12 to. I said I was aware of
13 policies of correspondence
14 indicating that Grace had
15 specifically added BNSF as a named
16 insured on the Grace's
17 comprehensive general liability
18 policies. And it has been alleged
19 that Grace also purchased
20 insurance for or on behalf of the
21 Burlington Northern Railroad.

22 BY MS. CASEY:

23 Q. And does Grace take a
24 position as to whether, in fact, it did

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1 purchase insurance policies for BNSF?

2 MS. HARDING: I am going to
3 object to the line of the
4 questions.

5 THE WITNESS: This a factual
6 question.

7 MS. HARDING: These are
8 factual questions.

9 MS. CASEY: And he was
10 designated as the 30(b)(6)
11 deponent for insurance available
12 to BNSF.

13 MS. HARDING: But you are
14 not asking about any specific
15 policies or about on any
16 particular documents. You are
17 asking him in general. And I
18 think it's very confusing and very
19 broad. I think the record has now
20 gotten completely confused. So I
21 think you need to be more
22 specific.

23 MR. SCHIAVONI: I think it's
24 asked answered.

BNSF

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1 THE WITNESS: I think I
2 answered, and I said I am not
3 aware of any policies that were
4 purchased by Grace or for the
5 benefit of Burlington -- excuse
6 me -- Zonolite or Grace, for
7 Burlington Northern, that --
8 again, if I misspoke, but that I
9 was aware of initially of
10 correspondence indicating that
11 Grace had added Burlington
12 Northern as an insured under its
13 own liability insurance policies.
14 And you showed me correspondence
15 which was consistent with my
16 recollection.

17 BY MS. CASEY:

18 Q. Okay. If you go back to
19 Hughes-6.

20 A. Yes.

21 MR. SCHIAVONI: Could I have
22 a copy of Hughes-6?

23 MR. PERNICONE: Here you go.

24 MS. HARDING: Could we take

PP
ctr

Page 273

1 a break so I have time to read all
2 the documents that have been
3 marked and just take a ten-minute
4 break?

5 MS. CASEY: Yes.

6 MS. HARDING: I want to make
7 sure that I am making my proper
8 objections. Thanks.

9 (There was a break from 2:43
10 p.m. to 2:57 p.m.)

11 THE WITNESS: Before we go
12 further, in reviewing the
13 documents here, I think I
14 misspoke. I had it reversed in
15 looking at the correspondence in a
16 couple of things you said.

17 The certificates of
18 insurance and the correspondence
19 from 1961, my understanding is
20 that there is evidence that Grace
21 purchased insurance for the
22 benefit of the Burlington Northern
23 related to the operation of the
24 loading facility out in Libby,

CNA
Obj:
F; R;
BE; HPP
Obj:
BE;
F

<p style="text-align: right;">Page 274</p> <p>BNSF</p> <p>1 Montana.</p> <p>2 I haven't seen -- I am not</p> <p>3 familiar with the fact that</p> <p>4 Burlington Northern was</p> <p>5 specifically added as an insured</p> <p>6 to Grace's own general liability</p> <p>7 policies, and I think I had that</p> <p>8 reversed when we were speaking a</p> <p>9 moment ago.</p> <p>10 BY MS. CASEY:</p> <p>11 Q. Is it your understanding</p> <p>12 that to the extent any policy was</p> <p>13 purchased naming BNSF as the insured,</p> <p>14 that it is the subject of a settlement</p> <p>15 agreement with the insurers and Grace?</p> <p>16 MS. HARDING: Object to</p> <p>17 foundation to the extent that you</p> <p>18 know.</p> <p>19 MR. SCHIAVONI: Vague and</p> <p>20 ambiguous.</p> <p>21 THE WITNESS: I would have</p> <p>22 to look at the insurance</p> <p>23 agreements themselves.</p> <p>24 BY MS. CASEY:</p> <p style="text-align: right;">PP Obj: BE; F CNA Obj: F,R; BE,H</p>	<p style="text-align: right;">Page 276</p> <p>1 A. I have read it right now. I</p> <p>2 don't recall seeing it before.</p> <p>3 Q. And Hughes-7, on the second</p> <p>4 page, states: "Zonolite Company has</p> <p>5 complied with this provision by providing</p> <p>6 liability policy for the benefit of the</p> <p>7 Great Northern Railway Company under</p> <p>8 Royal Indemnity Policy RLH 703154,</p> <p>9 effective for the period April 23, 1953</p> <p>10 to April 23, 1956."</p> <p>11 Have you ever seen that</p> <p>12 policy?</p> <p>13 A. Not that I recall.</p> <p>14 Q. It also refers to the --</p> <p>15 MR. SCHIAVONI: I object to</p> <p>16 the reading of the document to the</p> <p>17 extent the witness has made it</p> <p>18 clear he hasn't seen it before.</p> <p>19 And you are not offering this</p> <p>20 document in any way to refresh the</p> <p>21 recollection that the witness said</p> <p>22 he was not knowledgeable about. I</p> <p>23 object.</p> <p>24 MS. HARDING: I haven't</p>
<p style="text-align: right;">Page 275</p> <p>1 Q. The settlement agreements?</p> <p>2 A. The settlement agreements.</p> <p>3 Excuse me.</p> <p>4 MS. CASEY: I would like to</p> <p>5 mark this as Hughes-7.</p> <p>6 (Hughes-7 marked for</p> <p>7 identification at this time.)</p> <p>8 MS. HARDING: I am objecting</p> <p>9 to the previous question because I</p> <p>10 think I didn't understand it. To</p> <p>11 the extent that you were asking</p> <p>12 him about whether the insurance</p> <p>13 that Grace purchased for you was</p> <p>14 settled.</p> <p>15 MS. CASEY: Correct.</p> <p>16 MS. HARDING: Okay. I don't</p> <p>17 understand how he can answer that</p> <p>18 question, so I object. I think I</p> <p>19 objected originally, but I want to</p> <p>20 make sure.</p> <p>21 THE WITNESS: All right.</p> <p>22 BY MS. CASEY:</p> <p>23 Q. Are you familiar with</p> <p>24 Hughes-7?</p>	<p style="text-align: right;">Page 277</p> <p>1 objected yet because I don't think</p> <p>2 you have asked him questions about</p> <p>3 the document. You asked if he has</p> <p>4 seen a reference to a policy in</p> <p>5 here, and I think he said no.</p> <p>6 So I agree generally with</p> <p>7 the objection about the document,</p> <p>8 but I don't think you have asked a</p> <p>9 question about it yet.</p> <p>10 BY MS. CASEY:</p> <p>11 Q. Who at Grace is responsible</p> <p>12 for maintaining Grace's business records?</p> <p>13 Who would be the document custodian?</p> <p>14 MS. HARDING: Object to form</p> <p>15 in terms of breadth and time.</p> <p>16 THE WITNESS: Again, it</p> <p>17 would vary between what types of</p> <p>18 records and the business unit</p> <p>19 involved and so on.</p> <p>20 BY MS. CASEY:</p> <p>21 Q. Do you have any idea who</p> <p>22 would be able to authenticate the</p> <p>23 documents, Hughes-6 and Hughes-7?</p> <p>24 A. It's not a Grace document,</p>

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1 prepare this witness for those
2 questions because we weren't aware
3 you were going to ask him about
4 it.

5 MS. CASEY: I join in the
6 objection. He was listed as the
7 30(b)(6) deponent for insurance
8 issues related to BNSF, which is
9 why I prepared my questions for
10 today.

11 But I have no further
12 questions.

13 MR. SCHIAVONI: If you feel
14 there aren't any questions that
15 have been answered, ask them now.

16 MS. HARDING: Right. He's
17 answering all of your questions.

18 MS. CASEY: He's already
19 answered my questions and now said
20 he does not know.

21 MR. SCHIAVONI: If there are
22 any questions that you feel
23 haven't been answered, you should
24 state them right now, Counselor.

CPO

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1 MS. CASEY: I have no
2 further questions, but I would
3 like to, in addition to the
4 objections that have already been
5 stated on the record, also object
6 on the basis that the Debtors had
7 not produced the insurance
8 policies prior to Mr. Posner's
9 deposition but has produced the
10 insurance policies prior to
11 Mr. Hughes' deposition. With
12 that, I pass the witness.

13 MR. BROWN: Why don't we
14 mark that as 11.

15 (Hughes-11 marked for
16 identification at this time.)

- - -

EXAMINATION

- - -

20 BY MR. BROWN:

21 Q. Good afternoon, Mr. Hughes.
22 My name is Michael Brown. I represent
23 GEICO, Republic Insurance Company, Seaton
24 Insurance Company, and OneBeacon America

PT
Obj:
R

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1 MS. CASEY: He answered the
2 questions.

3 Excuse me?

4 MS. HARDING: Never mind.
5 He answered -- you asked a
6 question, and he answered it.

7 THE WITNESS: Well, you
8 didn't ask a question, actually.
9 But...

10 MS. CASEY: Can you read the
11 last question, please, and the
12 answer if there was one?

13 (The reporter read from the
14 record as requested.)

15 THE WITNESS: My point -- my
16 answer is that -- the answer to
17 the question is in the settlement
18 agreement with CNA at Continental
19 Casualty Company in assuming that
20 the Exhibit 5 is accurate,
21 policies, which have the policy
22 number CCP 4834440, appear on
23 Exhibit 5 and listed as settled
24 insurance policies under the Plan.

CPO

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1 Insurance Company.

2 We have just had marked as
3 Hughes-11 a document that I would like
4 you to take a look at and tell me if you
5 can identify it.

6 A. It's a letter indicted April
7 25th, 2009 from Barbara Harding to
8 counsel, and attached is the witness
9 designations and topics of deposition and
10 a listing of the designated witness based
11 on deposition notices that have been
12 filed in this case and the confirmation
13 hearing.

14 Q. Okay. And have you seen
15 this document before today?

16 A. I have.

17 Q. And just so it's clear, this
18 is a compilation of all the various
19 topics and particular Grace witness that
20 is prepared to testify about the subjects
21 where his name appears, correct?

22 A. Right.

23 Q. Okay. You can put that
24 aside.

PT
Obj:
R

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1 Are you generally familiar
2 with Grace's liability insurance program?

3 A. Yes.

4 Q. Okay. Do you understand
5 that Grace has various layers of
6 insurance?

7 A. Yes.

8 Q. Okay. Could you describe
9 for me your understanding of that?

10 A. Well, under the period of
11 time from, say, pre-1985 when there was
12 asbestos insurance available, Grace would
13 each year or -- and it would have a
14 primary policy with CNA from 1973 through
15 '85, Maryland Casualty before that, and
16 that there would be additional policies,
17 excess policies, which would provide
18 coverage for losses or claims in the
19 event that the aggregate limits of the
20 primary policies were exhausted.

21 And so a company like Grace
22 would go up and buy, you know, coverage,
23 insurance coverage for a particular year,
24 a particular policy period, and they

1 deposition via teleconference at
2 this time.)

3 BY MR. BROWN:

4 Q. Mr. Hughes, you have before
5 you a document we marked as Hughes-12.
6 Can you take a few moments to familiarize
7 yourself with it?

8 A. Sure.

9 MS. HARDING: I am going to
10 note for the record that we
11 did designate Mr. Finke with
12 respect to the Transfer Agreement.
13 But if you want to ask prosecute
14 Hughes a question --

15 MR. BROWN: I am not going
16 to ask him a lot about the
17 agreement. I am going to ask
18 about the attachment to the
19 agreement.

20 MS. HARDING: I don't think
21 it changes the notation for the
22 record. But go ahead and ask him
23 questions, and to the extent he
24 can answer without speculating...

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1 would have a primary policy. And then
2 they would have policies above that, say
3 you know, at \$5 million level, \$10
4 million level, depending on how they
5 assess their risk.

6 Q. Okay. And you have a
7 general familiarity with the concept of a
8 coverage chart, correct?

9 A. Yes.

10 Q. Okay. And you understand
11 that there is various layers of coverage
12 from the primary to the umbrella and the
13 excess above that?

14 A. Yes.

15 Q. And Grace, as you just
16 testified, purchased policies in each
17 policy year at each of those levels?

18 A. Yes.

19 MR. BROWN: Let me mark a
20 second document, and this will be
21 Hughes-12.

22 (Hughes-12 marked for
23 identification at this time.)

24 (Mr. Speights re-joined the

1 BY MR. BROWN:

2 Q. Let me start by asking you
3 whether you have seen the document marked
4 Hughes-12 before?

5 A. I have seen the agreement
6 before.

7 Q. Okay. Can you look at the
8 back of it, and you will note that the
9 agreement has some schedules?

10 A. Yes.

11 Q. I believe there are three of
12 them.

13 Have you seen those
14 schedules before today?

15 A. I can't say that I have seen
16 these schedules. I have seen similar
17 documents.

18 Q. Okay. Have you seen ones
19 similar to what's been marked or what is
20 identified as Schedule 1?

21 A. Yes.

22 Q. Okay. In what connection
23 did you see the document that is attached
24 as Schedule 1 to Hughes-12?

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1 A. Just in connection with the
2 case, in connection with, you know, my
3 involvement in asbestos litigation and
4 the coverage issues associated with it to
5 Jeff Posner and others within Grace. I
6 think I have seen this policy list
7 before.

8 Q. Okay. Is this a document
9 that Mr. Posner prepared; do you know?

10 A. Not specifically, no.

11 Q. Okay. Is it a document that
12 someone at Grace prepared?

13 A. I don't know this specific
14 version of the document, but Mr. Posner
15 certainly would be the person that if I
16 were to have undertaken the task of
17 creating this document, I would have
18 consulted with Mr. Posner.

19 Q. Okay. Can you take a look
20 at the first page? It's a -- the
21 Schedule is a 20-page document. And you
22 will see that there are -- well, first of
23 all, what do you understand the schedule
24 generally to be?

1 the specific insurance policies.

2 Generally, you have a policy number
3 identifying which policy. And then the
4 layers, when we were talking about before
5 about the program and how you have to
6 umbrella policies and excess policies,
7 and they are layered based on the amount
8 of the coverage available for a
9 particular policy period. That
10 identifies which policy -- excuse me --
11 which layer the particular policy is in
12 the Grace coverage block.

13 Q. If it says primary, that's
14 the very bottom level of insurance; is
15 that correct?

16 A. Yes.

17 Q. And then if it has a one
18 next to it, is that the first layer
19 excess?

20 A. First layer excess would be
21 the way I understand it.

22 Q. And it goes up to -- the
23 highest number I thought I saw was 8 and
24 would be the highest level for any policy

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1 A. The list of policies that
2 were available to Grace to pay
3 asbestos-related claims.

4 Q. Okay. Would these be
5 policies that would have been in the part
6 of the general liability program that you
7 indicated you were generally familiar
8 with?

9 A. Yes.

10 Q. Okay. Can you describe for
11 me what each of the headings along the
12 top of the first page, what you
13 understand those to mean?

14 A. Well, the policy year is the
15 year that the insurance policy covered in
16 terms of losses that occurred in the year
17 or at least triggered the insurance
18 coverage for that period of time.
19 Insurer is obviously the insurer. And
20 then insurance company that's providing
21 the coverage is obligated to provide
22 insurance for losses that triggered the
23 policy.

24 The policy number identifies

1 year? That is the highest level of
2 excess insurance?

3 A. That's the highest I saw.

4 Q. Okay. Now, I think you
5 testified earlier that you were the
6 person that was primarily responsible for
7 handling the day-to-day defense of Grace
8 PI claims at least internally at Grace;
9 is that right?

10 A. Yes.

11 Q. Okay. And in that capacity,
12 did you have occasion to deal with
13 insurance issues?

14 A. Yes. Again, as I have
15 described, primarily in the context of
16 Grace's obligations under insurance
17 arrangements with reimbursement or
18 coverage in place arranged. Grace had
19 obligations to insurers in making sure we
20 met those obligations and getting
21 reimbursed under the agreements.

22 Q. Okay.

23 A. And the policies as well, I
24 suppose.